

Department of Energy

§ 1004.8

successor thereto, may be automatically considered a FOIA Act request.

(c) Concurrence of the Director of Classification is required on all responses involving the denial of classified information. The Director of Classification will be informed of the request by either the FOIA Officer or the Authorizing Official to whom the action is assigned, and will advise the office originating the records, or having responsibility for the records, and consult with such office or offices prior to making a determination under this section.

(d) The written notice of a determination to deny records, or portions of records, which contain both classified material and other exempt material, will be concurred in by the Director of Classification who will be the Denying Official for the classified portion of such records in accordance with §§1004.5(c) and 1004.7(b)(2). If other DOE officials or appropriate officials of other agencies are responsible for denying any portion of the record, their names and titles or positions will be listed in the notice of denial in accordance with §§1004.5(c) and 1004.7(b)(2) and it will be clearly indicated what portion or portions they were responsible for denying.

(e) Requests for DOE records containing classified information received from another agency, and requests for classified documents originating in another agency, will be coordinated with or referred to the other agency consistent with the provisions of §1004.4(f). Coordination or referral of information or documents subject to this section will be effected by the Director of Classification (in consultation with the Authorizing Official) with the appropriate official of the other agency.

[53 FR 15661, May 3, 1988, as amended at 79 FR 22858, Apr. 25, 2014]

§ 1004.7 Responses by authorizing officials: Form and content.

(a) *Form of grant.* Records requested pursuant to §1004.4 will be made available promptly, when they are identified and determined to be nonexempt under this Regulation, the FOIA, and where the applicable fees are \$15 or less or where it has been determined that the payment of applicable fees should be

waived. Where the applicable fees exceed \$15, the records may be made available before all charges are paid.

(b) *Form of denial.* A reply denying a request for a record will be in writing. It will be signed by a FOIA Officer the Denying Official pursuant to §1004.5 (b) or (c) and will include:

(1) *Reason for denial.* A statement of the reason for denial, containing a reference to the specific exemption under the FOIA authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, and a statement of why a discretionary release is not appropriate. The amount of information deleted and the applicable exemption will be indicated on the released portion of the record, unless the indication would harm an interest protected by the exemption.

(2) *Persons responsible for denial.* A statement setting forth the name and the title or position of each Denying Official and identifying the portion of the denial for which each Denying Official is responsible.

(3) *Segregation of nonexempt material.* A statement or notation addressing the issue of whether there is any segregable nonexempt material in the documents or portions thereof identified as being denied.

(4) *Adequacy of search.* Although a determination that no such record is known to exist is not a denial, the requester will be informed that a challenge may be made to the adequacy of the search by appealing within 30 calendar days to the Office of Hearings and Appeals.

(5) *Administrative appeal.* A statement that the determination to deny documents made within the statutory time period, may be appealed within 30 calendar days to the Office of Hearings and Appeals.

[53 FR 15661, May 3, 1988, as amended at 79 FR 22858, Apr. 25, 2014]

§ 1004.8 Appeal of initial denials.

(a) *Appeal to Office of Hearings and Appeals.* When the Authorizing or Denying Official or FOIA Officer Official has denied a request for records in whole or in part or has responded that there are no documents responsive to the request consistent with §1004.4(d),